

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

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| DEMON JAY REED, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. CIV-18-1257-D |
| |) | |
| BOARD OF COUNTY COMMISSIONERS |) | |
| FOR GRADY COUNTY, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |

ORDER

Before the Court is Plaintiff's Motion to Strike Defendant Jim Weir's Motion for Summary Judgment [Doc No. 93]. Plaintiff points out that Defendant Jim Weir's Motion for Summary Judgment and Brief in Support [Doc. No. 88] incorporates sections of other Defendants' briefs and so exceeds the 30-page limit of LCvR7.1(e). Defendant Weir has responded [Doc. No. 107] by admitting the violation but opposing the requested relief. He contends the violation was not willful or egregious and the severe sanction of striking his motion and brief is not warranted.¹ Defendant Weir proposes that Plaintiff instead be authorized to file an oversized response brief.

¹ Defense counsel states his belief that "incorporation by reference is expressly allowed by Fed. R. Civ. P. 10(c)." *See* Resp. Br. at 4. However, Rule 10(c) authorizes "statement[s] in a pleading" to be "adopted by reference elsewhere in the same pleading or in any other pleading or motion." Motions and briefs are not pleadings. *See* Fed. R. Civ. P. 7(a) (defining pleadings); *see also Brever v. Rockwell Int'l Corp.*, 40 F.3d 1119, 1131 (10th Cir. 1994) ("motions to dismiss or for summary judgment were not responsive pleadings").

Upon consideration, the Court finds that Plaintiff's Motion should be granted but that Defendant Weir should be permitted to cure the deficiency by filing a new summary judgment motion and brief out of time. Plaintiff will not be prejudiced because his obligation to respond to Defendant Weir's initial motion has been delayed pending the disposition of this Motion, *see* 6/22/21 Order [Doc. No. 96], and no other deadlines are affected. Plaintiff will have a full opportunity to respond to the new motion and supporting brief after they are filed.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Strike Defendant Jim Weir's Motion for Summary Judgment [Doc No. 93] is **GRANTED**. Defendant Weir's Motion for Summary Judgment and Brief in Support [Doc. No. 88] is **STRICKEN** without prejudice to filing a new motion and brief within 14 days from the date of this Order. If an oversized brief is needed, Defendant Weir must seek leave of court to exceed the page limit of LCvR7.1(e).

IT IS SO ORDERED this 9th day of July, 2021.



TIMOTHY D. DeGIUSTI
Chief United States District Judge